

U.S. Patent Application Serial No. 10/658,209
Response and Amendment dated November 13, 2006
Reply to Office Action mailed July 12, 2006

REMARKS

The Applicant hereby petitions for a one-month extension of time to file his response/amendment to the Office Action dated July 12, 2006 to November 12, 2006 (Sunday), today's date being Monday, November 13, 2006. The requisite fee of \$120.00 is submitted herewith.

By the present Amendment, the specification has been amended to correct a typographical error.

Reconsideration and allowance of the above-identified application is respectfully requested. The Applicants request that the Examiner determine whether the drawings filed on December 5, 2003 are acceptable, since this is not indicated in the check boxes in the Office Action.

Claims 1-71 are pending. Claims 1, 22, 44 and 60 are independent. Applicant notes with appreciation the allowance of dependent claims 11, 16-21, 32, 37-42, 50, 54-59 and 66-70 if rewritten in independent form to include the limitations of the base claim and any intervening claims. Applicant wishes to hold amendment of these claims into independent form in abeyance until the Examiner has had an opportunity to consider the following remarks regarding the base and intervening claims.

Claims 1-5, 8-10, 12-15, 22-26, 29-31, 33, 34, 43-46, 49, 51-53, 60, 63-65 and 71 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,731,726 to Allen, III (hereinafter referred to as Allen, III). Claims 6, 7, 27, 28, 47, 48, 61 and 62 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen, III in view of U.S. Patent No. 5,251,126, to Kahn et al (hereinafter Kahn et al). Claims 35 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen, III in view of U.S. Patent Application Publication No. 2003/0125612, to Fox et al (hereinafter Fox et al). These rejections are respectfully traversed.

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REJECTION UNDER 35 U.S.C. §102(b)

Regarding the 35 U.S.C. §102(b) rejection, it is well known that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Respectfully, the Applicant submits that Allen, III does not teach or suggest each and every claimed feature of independent claims 1, 22, 44 and 60.

Regarding independent claims 1 and 22, each recites, among other elements, calculating and announcing an average medical data level from at least first and second medical data levels, and announcing the first and second medical data levels after receiving respective user inputs to announce corresponding ones of these two medical data levels. Independent claims 44 and 60 are similar to claims 1 and 22 and recite calculating and displaying an average blood glucose level from three stored blood glucose levels as constituent values, and displaying respective ones of the constituent values after receiving corresponding user inputs. The Office Action relies on column 3, lines 54-56 and column 10, lines 32-60 of Allen, III to purportedly teach these claimed elements. The Applicant respectfully disagrees.

Column 3, lines 54-56 of Allen, III states that, after each blood test, “the monitor will automatically provide the previous 3-day blood sugar average *for the relative time of day* (emphasis added).” The next two lines (i.e., column 3, lines 56-57) of Allen, III state that, if desired, “the actual numbers *for each day* can be displayed using the RD [Review Data] key” and have apparently been incorrectly interpreted in the Office Action to mean that the constituent parts of the average are displayed. A careful reading of Allen, III proves this is an improper interpretation and that the only numbers that are displayed in response to user inputs are consecutive readings *in a single day* and not constituent readings making up the 3-day average (i.e., a reading at the same *relative time of day* such as noon for three days).

A careful reading of column 10, lines 32-60 of Allen, III explains how the actual numbers *for each day* can be displayed as mentioned in column 3, lines 56-57 of Allen, III. If the user presses “1” after pressing the RD key, the user sees the most recent blood sugar and

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insulin levels and therefore no average or constituent values used to calculate the average. If the user presses “2” after pressing the RD key, the user sees only consecutive scheduled blood sugar tests performed before meals and at bedtime and not unscheduled tests (see column 11, lines 4-35). The user presses the upward and downward arrow keys to review *consecutive* test values in time and not values at the same relative time of day on different days used to determine a 3-day average. In fact, the only other mention of averaging in Allen, III is in connection with steps 754 and 760 and the averaging of an insulin dose. Accordingly, withdrawal of this basis for rejecting independent claims 1, 22, 44 and 60 and their corresponding dependent claims 2-5, 8-10, 12-15, 23-26, 29-31, 33, 34, 43, 45-46, 49, 51-53, 63-65 and 71 is believed to be proper and is respectfully requested.

Further, dependent claims 4, 25 and 45 also recite announcing the average level again when another user input is received after announcing the second medical data level. Allen, III is silent as to displaying the constituent values used to generate the 3-day average for the same *relative time of day* on different days and therefore cannot disclose or teach a round-robin display of an average and its constituent values as claimed. Similarly, claims 9 and 30 recite a round-robin display of an average and its constituent n values used to calculate an average as recited in claims 8 and 29. Allen, III therefore cannot anticipate these claims for the same reasons provided in connection with claims 4 and 25.

Claims 10, 12, 31, 33 and 49 recite, among other elements, a display having a first area for displaying an average and constituent values and a second area operating as an indicator to indicating which of the constituent values is displayed in the first area. Allen, III is silent regarding display of constituent values for an average, as well as first, second and third display areas as claimed.

REJECTIONS UNDER 35 U.S.C. §103(a)

I. Turning now to the §103(a) rejections, the Office Action asserts that claims 6, 7, 27, 28, 47, 48, 61 and 62 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen,

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III in view of U.S. Patent No. 5,251,126, to Kahn et al (hereinafter Kahn et al). First, Kahn et al does not overcome the deficiencies of Allen, III described above. Second, the section at column 3, lines 34-35 in Kahn et al relied on in the Office Action does not teach or suggest the variability between stored medical data levels used to determine an average as claimed.

With regard to the failure of Kahn et al to overcome the deficiencies of Allen, III, Kahn et al teaches generation of data interpretation reports for use by a physician in place of patient log books containing their diabetes management data. While Kahn et al does describe use of average BG levels, it is silent regarding annunciation of constituent levels in response to user inputs. In fact, the teaching of graphs for review by a physician in Kahn et al teaches away from the annunciation of an average and constituent parts by a user monitoring device. Accordingly, the withdrawal of the §103(a) rejection of dependent claims 6, 7, 27, 28, 47, 48, 61 and 62 is proper and is respectfully requested.

Further, column 3, lines 34-35 in Kahn et al merely describes computation of a “statistic” (e.g., a mean or standard variation) for samples taken from an insulin regimen period. Kahn et al is silent as to calculation of a variability indicator (e.g., a standard deviation) of constituent medical data levels (e.g., blood glucose levels) used to determine an average, as recited in claims 6, 7, 27, 28, 47, 48, 61 and 62.

II. The Office Action asserts that claims 35 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen, III in view of U.S. Patent Application Publication No. 2003/0125612, to Fox et al (hereinafter Fox et al). Fox et al does not overcome the deficiencies of Allen, III described above. While Fox et al does describe a monitor that calculates average BG levels, it is silent regarding annunciation of constituent levels in response to user inputs. Second, the section at paragraph [0069] in Fox et al relied on in the Office Action does not teach or suggest the prompts annunciated to a user to define a time period when the average is desired for a selected number of days as claimed. Paragraph [0070] in Fox et al describes a user setting the anticipated wake time but not a time period nor the selected number of days.

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CONCLUSION

Accordingly, the Applicants respectfully request that the Examiner withdraw all of the outstanding prior art rejections.

In view of the above, it is believed that the application is in condition for allowance and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,


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